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11
12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 In re:

16 **Hi-Five Enterprises, LLC**, a
17 California limited liability company,

18 Debtor and Debtor-In-
19 Possession.

Case No. 4:10-bk-48268-RJN

Chapter 11

**EMERGENCY MOTION OF DEBTORS
FOR AUTHORITY TO USE CASH
COLLATERAL ON AN INTERIM
BASIS PENDING A FINAL HEARING;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing

DATE: [TO BE SET]

TIME: [TO BE SET]

PLACE: Courtroom 202
1300 Clay Street
Oakland, CA 94612

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1 Hi-Five Enterprises, LLC ("Hi-Five") hereby files this Emergency Motion seeking
2 authority to use cash collateral to pay its ordinary and necessary operating expenses in
3 accordance with the budget (the "Budget") attached hereto as Exhibit "A." One South
4 Lake Street, LLC ("One South") and Wild Game Ng, LLC, d/b/a The Siena Hotel Spa &
5 Casino ("Wild Game"), will file joinders to this Emergency Motion. As set forth in the
6 annexed Memorandum of Points and Authorities, Hi-Five, One South, and Wild Game
7 (collectively, the "Debtors") believe that their cash assets may not be subject to any valid,
8 perfected, and unavoidable liens, or to the extent that such liens exist, they are limited in
9 nature. Nevertheless, the Debtors have filed this Emergency Motion out of an abundance
10 of caution and because it is essential, to avoid immediate and irreparable harm to their
11 business operations, their estates, and their creditors, that the Debtors have undisrupted
12 access to their cash to pay their ordinary business expenses. Furthermore, the Debtors
13 expect to file a stipulation with the one creditor (R.E. Reno, LLC and defined as Lender,
14 below) that may conceivably have a lien on the cash of the businesses prior to the hearing
15 on this Emergency Motion.

16 This Emergency Motion is based on Bankruptcy Local Rules 9006-1, 9029-1, and
17 11 U.S.C. § 363, the annexed Memorandum of Points and Authorities, the accompanying
18 Omnibus Declaration of Barney Ng (the "Ng Declaration"), the arguments and statements
19 of counsel to be made at the hearing on the Emergency Motion, and all other admissible
20 evidence properly brought before the Court. The Debtors reserve the right to supplement
21 this Emergency Motion up until, or at, the hearing on this Emergency Motion.

22 I.

23 **INTRODUCTORY STATEMENT**

24 As noted above, it appears there may be no party with a valid, perfected, and
25 unavoidable lien in the Debtors' cash assets. Hi-Five has no known secured creditors. In
26 or about August 2001, One South, which owns the real property The Siena Hotel Spa &
27 Casino ("The Siena"), entered into a \$50 million acquisition and development loan with
28 R.E. Reno, LLC (the "Lender"), together with a *Deed of Trust, Security Agreement,*

1 *Assignment of Leases and Rents and Fixture Filing* (the “Deed of Trust”) granting to the
2 Lender a security interest in the property and certain other assets of One South. The
3 Debtors have conducted a UCC search, and it appears that the Lender has filed a UCC-1
4 financing statement only with respect to One South. Moreover, based on the Debtors’
5 discussions with the Lender, it appears that the Lender may not assert at this time that its
6 UCC-1 financing statement extends to the assets of Wild Game which operates the
7 Debtors’ businesses and generates cash assets. One South’s cash assets are *de minimis*,
8 and the Budget proposed by the Debtors does not contemplate any expenditure of One
9 South’s cash. As previously noted, based upon a discussion with the Lender’s counsel in
10 the afternoon of July 26, 2010, the Debtors expect the Lender to stipulate to the usage of
11 cash collateral, limited by certain conditions and reservations of rights. As such, this
12 Emergency Motion is filed to protect the Debtors’ estates in the unlikely event a stipulated
13 resolution is not completed forthwith.

14 Finally, Wild Game, which operates The Siena, is not a party to any loan
15 agreement or credit facility that appears to encumber its cash assets. Eight entities
16 (collectively, the “Equipment Lessors”) have filed UCC-1 financing statements with
17 respect to various gaming equipment and lighting fixtures located at The Siena: IGT,
18 Konami Gaming, Inc., Raymond Leasing Corp., Young Electric Sign Company, PDS
19 Gaming Corporation, PDS Gaming Corporation – Nevada, Bank of Wyoming, and PDS
20 Funding 2004-A, LLC. The Debtors have not yet determined whether the underlying
21 agreements with these parties are properly characterized as leases or financing
22 agreements, but in any event, the security interests asserted appear to pertain to the Wild
23 Game’s leased equipment and not the cash generated by the Wild Game’s operations. The
24 Equipment Lessors will be provided notice of this Motion and any hearing thereto.

25 The Debtors believe that the Lender will consent to Wild Game’s use of cash, in
26 accordance with the Budget, to the extent that the Lender may have a lien in such cash.
27 Furthermore, as demonstrated by the Debtors’ Budget and as discussed below, to the
28 extent that the Lender or the Equipment Lessors may have a lien in any of Wild Game’s

1 cash assets, these parties are adequately protected by the Debtors' continuing business
2 operations.

3 It is imperative that the Debtors obtain immediate Court authority to use their cash,
4 to the extent that such cash may constitute cash collateral, in order to avoid immediate and
5 irreparable harm to their business. An integral aspect of maintaining the Debtors'
6 relationships, compliance with applicable gaming laws and regulations, and their business
7 operations is the Debtors' ability to use their cash to maintain a sufficient level of working
8 capital, to pay ordinary course obligations such as those to their employees, customer
9 programs, vendors, and taxing authorities, to pay for necessary ordinary course property
10 maintenance and projects, and to maintain minimum bankroll requirements as determined
11 by the Nevada Gaming Commission. Accordingly this Emergency Motion seeks authority
12 for the Debtors to use their cash in the ordinary course of business, to the extent such cash
13 may constitute cash collateral, in accordance with the attached Budget (Exhibit "A"), and
14 for the period covered by the Budget, *e.g.*, for the 12 week period following the
15 commencement of these cases (the "Budget Period").

16 II.

17 CERTIFICATION

18 I have read this Emergency Motion and the Introductory Statement set forth above.
19 Because this is neither a stipulation nor an uncontested motion, I do not believe the
20 Court's *Guidelines for Cash Collateral and Financing Motions* are applicable.
21 Nevertheless, to the extent applicable, to the best of my knowledge, information, and
22 belief, formed after reasonable inquiry, the terms of the relief sought in this Emergency
23 Motion are in conformity with the Court's *Guidelines for Cash Collateral and Financing*
24 *Motions*. I understand, and have advised the Debtors, that the Court may grant
25 appropriate relief under Rule 9024 of the Federal Rules of Bankruptcy Procedure if the
26 Court determines that the material elements of this Emergency Motion were not
27
28

1 adequately disclosed in the Introductory Statement. Once a stipulation is filed a new
2 certification will be submitted.

3
4 Dated: July 26, 2010

ARENT FOX LLP

5 By: /s/ Aram Ordubegian
6 Aram Ordubegian
7 Andy S. Kong
8 *Proposed* Attorneys for the
9 Debtors and Debtors in Possession
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **GENERAL CASE BACKGROUND**

4 The debtors and debtors-in-possession in these related bankruptcy cases
5 (collectively, the "Cases") are Hi-Five, One South, and Wild Game. The Debtors filed
6 their respective bankruptcy cases on July 22, 2010 (the "Petition Date").

7 **A. The Debtors' Business Operations.**

8 **1. One South**

9 One South was formed for the purpose of owning and leasing The Siena, as well as
10 the adjacent parking lot property and an expansion property (collectively, the "Property").
11 The Property is leased to Wild Game. Hi-Five holds a 25% equity interest in One South.

12 In connection with the acquisition of the Property, on or about August 22, 2001,
13 One South and the Lender entered into a *Promissory Note Secured by Deed of Trust* (the
14 "Acquisition Loan") in the principal amount of \$50 million, thereby consolidating a
15 number of prior loans that the Debtors had entered into with the Lender. The Acquisition
16 Loan was originally due and payable on January 1, 2007; however, One South obtained a
17 five-year extension of the original maturity date. The Acquisition Loan is secured by a
18 security interest in the Property pursuant to the Deed of Trust, which was recorded on
19 December 17, 2001, under instrument number 2629346, in the office of the County
20 Recorder of Washoe County, Nevada (the "Security Agreement"). A UCC-1 affecting
21 only the Property only may have been recorded as well.

22 **2. Wild Game**

23 Wild Game operates The Siena Hotel Spa & Casino ("Siena") located in Reno,
24 Nevada which opened on July 31, 2001. The Siena is a boutique hotel featuring 185
25 rooms and 29 suites that range in size up to 1,200 square feet. The Siena also has
26 convention facilities, meeting and banquet space, various bars and restaurants, and an on-
27 site spa. The casino is 23,000 square feet and boasts all the latest equipment of a modern-
28 day gaming complex. The casino owns approximately 243 slot machines, 28 gaming

1 tables, a poker room, and a race and sports book. The Siena is one of the only boutique
2 hotel spa and casinos in Reno, and therefore it is not in direct competition with any other
3 Reno properties.

4 The Siena's spa is an important feature that attracts both local customers and guests
5 of the resort and adjacent resorts. The spa boasts eleven therapy rooms offering a number
6 of treatments and a mediation center. The spa is integrated into the adjacent pool and
7 outdoor recreation area, which also provides food and beverage services to its guests.

8 The Siena's casino marketing is directed at both the mid-level stakes gaming
9 customers (*e.g.*, customers who wager less than industry averages) and high-stakes
10 customers (*e.g.*, customers who wager more than industry averages). As the gaming
11 market in Reno has declined, a greater focus has been placed on mid-level stakes gaming
12 customers, because these customers tend to be consistent players who provide the Debtors
13 with a steady gaming revenue stream. This revenue is the base line for non-convention,
14 non-tourism, and non-weekend traffic. Marketing and promotions to the mid-level stakes
15 customer base are intended to drive consistent traffic on "off" days. The Siena also has
16 the ability to offer table games designed for the mid-level stakes market, to implement
17 stricter credit policies appropriate for this market, and to emphasize slot machine play
18 attractive to mid-level players. The Siena's strategy is to continue to invest in its slot
19 machines and table game products, to market to its customer base primarily through a
20 multi-tiered players' club program called the River Card loyalty program, and to offer slot
21 machine and poker tournaments and other special events and promotions.

22 The Debtors are focusing capital expenditures for The Siena toward maintaining its
23 hotel rooms and amenities in pristine condition to compete for customers with the other
24 hotels and casinos in Reno, Nevada. Room rental rates, slot revenues, and the use of the
25 convention and banquet spaces are the primary factors driving operating margins. The
26 Debtors also use various technologies to maintain labor costs at a reasonable level,
27 including kiosks for hotel check-in, slot club activities, and slot ticket redemption.

1 Gaming is the single area where a modification of win per unit does not require a
2 modification of the cost of operations and payroll.

3 **3. Hi-Five**

4 Hi-Five was originally created to allow investors that were interested in investing
5 in the acquisition of The Siena to use it as such an investment vehicle. Hi-Five has a 25%
6 membership interest in One South, and it therefore is an affiliate of One South and has an
7 interest in the Property. Hi-Five is located in this District and has become the “nerve
8 center” for the Debtors’ business. Furthermore, the insiders of the Debtors, the Lender,
9 and what appears to be a majority of unsecured creditors and interested parties either live
10 or do business in this District.

11 **B. The Recession and Events Leading to These Chapter 11 Filings.**

12 Although The Siena has historically not been a profitable business, in recent
13 months it commenced a restructuring effort that has produced significant positive results.
14 The Debtors’ Chapter 11 filings are designed to further these positive results and to
15 facilitate a comprehensive restructuring and reorganization for the Debtors.

16 **1. The Debtors’ Historical Operating Losses**

17 For the first 8 years, the Debtors’ sole managing member personally loaned Wild
18 Game the money needed to pay rent obligations to One South, which rent payments
19 provide the revenue needed to make payments on account of the Acquisition Loan.
20 Furthermore, Indian gaming in Sacramento, California, which began in or about June
21 2004, had an almost overnight effect on The Siena. There was, and continues to be, a
22 sudden drop in tourism, the cancellation of major conventions and festivals, and the
23 cancellation of numerous corporate seminars and events. And the overall economic
24 recession has particularly effected Reno, Nevada given its reliance on tourism and
25 construction.

26 These factors have all attributed to a serious decline in the Debtors’ revenue in
27 2008 and 2009. The Debtors’ total gross annual revenue in 2006 was \$26,358,958.78 and
28 increased in 2007 to \$26,507,984.30. However, commencing in 2008, the Debtors’ total

1 gross annual revenue began to sharply decline to \$22,587,090.67 in 2008 and to
2 \$18,579,278.75 in 2009. The Debtors incurred total net annual *losses* of \$4,385,569.63 in
3 2006, \$6,051,976.09 in 2007, \$6,661,108.05 in 2008, and \$6,699,065.01 in 2009. More
4 specifically, the Debtors' casino revenues in 2009 were \$9.5 million, a decrease of \$2.1
5 million from 2008. Casino revenues are comprised primarily of slot machine and table
6 game revenues. Slot machine and table game revenues decreased primarily due to less
7 wagering as a result of the slower economy, reduced hotel occupancy, and less walk-in
8 business. The Siena's room revenue in 2009 was \$3.4 million, a decrease of \$800,000
9 from 2008. Its revenues through the second quarter of 2010 were \$1.7 million, a decrease
10 of about \$900,000 from the same time last period 2009.

11 The Debtors were unable to meet their obligations under the Acquisition Loan and
12 accordingly, the Lender filed a notice of default on December 11, 2009, thereby
13 exacerbating Siena's difficulties. A notice of trustee's sale was never recorded.

14 **2. The Debtor's Turnaround Effort**

15 In November of 2009, the Debtors started inquiring into a number of companies
16 who focused on turnaround, workout, and other insolvency positioning to help restructure
17 the Debtors. In December 2009, the Debtors contracted with OnSite Consulting, Inc.
18 ("OnSite"), a hotel management and consulting firm, to undertake a concurrent audit and
19 restructuring of The Siena and determine an appropriate repositioning strategy. OnSite
20 recommended, and the Debtors made, significant operational changes to the customer
21 marketing program and third party hotel booking systems (*i.e.*, Expedia, etc.) that resulted
22 in the Debtors achieving an overall revenue that is now one of the highest in Reno. With
23 this restructuring, the hotel, food and beverage, spa, and other add-value services, which
24 once had been considered secondary to gaming, The Siena now enjoys revenues and
25 margins that match, or in some instances, surpass gaming.

26 The Debtors have achieved significant positive results from this repositioning
27 strategy. The Debtors closed a \$600,000 contract with United Airlines flight staff union,
28 and the Debtors now have a strong wedding base providing over \$28,000 per event. The

1 Siena is also seeing a consistent resurgence in sales. In all, while the top line volume has
2 decreased, the Debtors' profit margins have increased and the Debtors firmly believe that
3 an appropriate "right sizing" of the Debtors will allow them to achieve a positive cash
4 flow shortly and will allow the Debtors to secure a new investor, operational, and
5 financing sources for the benefit of creditors and equity holders.

6 **3. The Debtors' Past-Due Taxes and Minimum Bankroll**

7 While the Debtors' have made significant progress in their restructuring effort, they
8 have run out of time, by a matter of mere days or weeks, for resolving certain
9 delinquencies that have put their gaming license in jeopardy. The Debtors' Budget
10 indicates that they will have the funds needed to cure these delinquencies.

11 The Nevada Gaming Commission (the "Gaming Commission") requires all gaming
12 establishments in Nevada to maintain a "minimum bankroll," which is an amount that
13 must be kept liquid at all times based upon a formula driven by current cash on hand and
14 cash going forward. The minimum bankroll requirement is generally determined on a
15 yearly basis. In addition, gaming taxes are paid in advance based on such forecasts. With
16 the drastic, industry-wide drop in gaming and resort revenue discussed above, and with
17 cashflow remaining tight, The Siena has had difficulty maintaining its minimum bankroll
18 over an extended period of time.

19 Upon the Debtors' request, the Gaming Commission provided a modification of
20 The Siena's minimum bankroll requirement, but even with this modification, the
21 competitive pressures associated with Indian gaming in Sacramento, California, the global
22 recession and decline in gaming and tourism, and The Siena's fixed operating costs have
23 led the Debtors to fail to meet their minimum bankroll requirements on multiple occasions
24 towards the end of 2009 and in the first quarter of 2010. Additionally, during this period
25 the Debtors have been directing resources to settling historic debt accumulation, which in
26 turn has caused delinquencies in the Debtors' tax prepayments. This triggered
27 investigations, audits, and the filing of a complaint by the Gaming Commission. As a
28 result of the complaint, a hearing was called by the Gaming Commission to determine if

1 the Debtors' gaming license would be deemed surrendered by operation of statute on
2 account of the delinquencies in the payment of the Debtors' gaming taxes. The Gaming
3 Commission also evaluated the Debtors' ability to manage its day-to-day obligations,
4 including trade payables, labor costs, and obligations to gaming customers. At the
5 conclusion of the hearing, the Gaming Commission suspended Wild Game's license, but it
6 stayed enforcement for 30 days in order to allow the Debtors an opportunity to bring their
7 tax payments current and to address their other operational issues.

8 During this 30-day period, the Debtors explored numerous options and secured a
9 term sheet proposal for potential DIP financing. However, it became apparent that the
10 Debtors would not be able to weather the continuing economic recession and address their
11 outstanding current liabilities without strengthening their financial capital position and
12 taking appropriate measures afforded under Chapter 11 of the Bankruptcy Code.
13 Accordingly, the Debtors commenced these cases on July 21, 2010. At the Gaming
14 Commission's follow-up hearing on July 22, 2010, the Gaming Commission turned this
15 matter over to the Nevada Attorney General to oversee and ensure the Debtors' continued
16 gaming compliance. It remains the case that, upon payment of the delinquent gaming
17 taxes in the amount of approximately \$193,000 (which delinquencies were the original
18 cause for the complaint by the Gaming Commission), Wild Game's license will be
19 permanently reinstated.

20 **4. The Debtors' Operations in Chapter 11**

21 The Debtors are continuing to operate their business and manage their affairs as
22 debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. The Debtors'
23 management team, its legal advisors, and its financial advisors are working rapidly to
24 prepare a reorganization plan that will enable the company to emerge from Chapter 11 as
25 a strong, recapitalized, and profitable business.

26 **C. The Debtors' Assets.**

27 Based on the Debtors' books and records, as of December 31, 2009, the Debtors'
28 unaudited balance-sheet assets totaled approximately \$5.08 million. Of this amount, the

1 Debtors held, on a book value basis, approximately \$322,674 in net inventories; fixed
2 assets (including property and equipment) of \$2,207,940, net of depreciation; \$453,000 in
3 net accounts receivable; \$2,062,941 in cash; and other assets totaling approximately
4 \$40,000. While the Debtors have not yet closed their books for July 2010, the Debtors
5 estimate that the total assets as of that date, and July 21, 2010 (the "Petition Date"), will
6 be approximately \$3.8 million (not accounting for valuable litigation rights).

7 **D. The Debtors' Liabilities and Its Secured Creditors.**

8 Based on its books and records, as of June 30, 2010, the Debtors' unaudited,
9 balance-sheet liabilities totaled approximately \$20.7 million. This amount includes
10 approximately \$7.6 million in trade debts; \$196,000 in taxes; \$12.5 million in accrued
11 expenses and other current liabilities. Although the Debtors have not yet closed their
12 books for July 2010, they estimate that the total liabilities as of that date, and the Petition
13 Date, will be approximately \$23.3 million. Some of the Debtors' more significant
14 liabilities are described in more detail, herein. Naturally, the Debtors' bankruptcy
15 schedules and statement of financial affairs will have a more detailed and itemized list of
16 assets and liabilities.

17 As is set forth above, Hi-Five was created as an investment vehicle for parties that
18 were interested in participating in the acquisition of The Siena. Hi-Five is unaware of any
19 parties that assert liens against that company's assets.

20 One South, in turn, owns The Siena. In connection with the acquisition of the
21 Property, on or about August 22, 2001, One South entered into the Acquisition Loan with
22 the Lender, as well as the accompanying Security Agreement granting to the Lender a
23 security interest in substantially all of One South's assets. The Debtors are unaware of
24 any other parties that assert security interests in the Property.

25 The Siena is operated by Wild Game. As noted in the Introductory Statement, the
26 Equipment Lessors are the only parties that the Debtors are aware of who assert a security
27 interest in Wild Game's assets, and many of the underlying agreements may constitute
28 lease agreements rather than financing agreements. Consistent with that premise, four of

1 these UCC financing statements do not indicate what, if anything, the purported secured
2 parties assert a security interest in. A fifth asserts a lien in “all equipment and proceeds,”
3 and only the sixth asserts a lien in “accounts including proceeds... chattel paper including
4 proceeds... lease equipment including proceeds... and leased fixtures including
5 proceeds.”

6 **E. The Debtors’ Immediate Need for Use of Cash Collateral to Avoid Immediate**
7 **and Irreparable Harm to the Debtors’ Business.**

8 The Debtors have an emergency need for use of the Cash Collateral in accordance
9 with the Budget attached hereto as Exhibit “A” and request Court authorization on an
10 emergency interim basis for such use in order to avert an immediate closure of its
11 businesses. The Budget was formulated after review of the Debtors’ normal and ordinary
12 course cash needs in the operation of its businesses. The usage of Cash Collateral is in the
13 best interests of the Debtors and their estates.

14 The Debtors believe that the enterprise value of the Debtors’ businesses will not
15 diminish provided the Debtors’ businesses continue to operate in the ordinary course, the
16 Debtors are permitted to make the reasonable expenditures as proposed in the Budget and
17 all gaming licenses and permits and present management remain in place.

18 An integral aspect of maintaining the Debtors’ relationships, compliance with
19 applicable gaming laws and regulations, and their business operations is the Debtors’
20 ability to use the Cash Collateral to maintain a sufficient level of working capital in order
21 to pay ordinary course obligations such as those to their employees, customer programs,
22 vendors, and taxing authorities, to pay for necessary ordinary course property
23 maintenance and projects and to maintain minimum bankroll requirements as determined
24 by the Gaming Commission.

25 The Debtors have discussed their Chapter 11 filing with Lender, and they believe
26 that they will ultimately be able to reach a consensual agreement with Lender with respect
27 to the use of cash collateral—to the extent that Lender may have a valid, perfected
28 security interest in the Debtors’ cash—or alternatively, that Lender may have no objection

1 to this Emergency Motion, given the emergency nature of these filings there was not
2 sufficient time for the parties to negotiate a cash collateral stipulation.

3 **II.**

4 **LEGAL ARGUMENT**

5 A debtor in possession has all of the rights and powers of a trustee with respect to
6 property of the estate, including the right to use property of the estate in compliance with
7 Section 363.¹ The Debtor's use of such estate property is generally governed by Section
8 363 of the Bankruptcy Code, which provides in pertinent part:

9 "If the business of the debtor is authorized to be operated
10 under section ... 1108 ... of this title and unless the court orders
11 otherwise, the trustee may enter into transactions, including
12 the sale or lease of property of the estate, in the ordinary
course of business, without notice or a hearing, and may use
property of the estate in the ordinary course of business
without notice or a hearing."²

13 Section 363(c)(2) goes on to establish a special requirement with respect to "cash
14 collateral,"³ providing that the trustee or debtor in possession may use cash collateral
15 under subsection (c)(1) if: "(A) each entity that has an interest in such cash collateral
16 consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in
17 accordance with the provisions of this section."⁴ Further, upon the request of an entity
18 that has an interest in property proposed to be used by a debtor, the court shall prohibit or
19 condition such use "as is necessary to provide adequate protection of such interest."⁵

20 1. **The Debtors Should Be Authorized To Use Cash Collateral To Operate,**
21 **Maintain, And Preserve Their Business.**

22 It is well settled that it is appropriate for a Chapter 11 debtor to use cash collateral

23
24 ¹ See 11 U.S.C. §1107(a).

25 ² 11 U.S.C. § 363(c)(1).

26 ³ Cash collateral is defined as "cash, negotiable instruments, documents of title, securities, deposit accounts or
27 other cash equivalents in which the estate and an entity other than the estate have an interest . . ." 11 U.S.C. §
363(a).

28 ⁴ 11 U.S.C. § 363(c)(2)(A) and (B).

⁵ 11 U.S.C. §363(e).

1 for a reasonable period of time for the purpose of maintaining and operating its property.⁶
2 The Debtors have determined that it would overwhelmingly be in the best interests of their
3 estates and creditors, suppliers, and employees to continue to operate and maintain their
4 business as a going concern. And as noted above, the Court should authorize the Debtors
5 to use cash collateral to continue to operate and maintain their business because the
6 interests of the Lender and the Equipment Lessors in cash collateral, if any, will be
7 adequately protected by the going concern value of the businesses.

8 **2. Lender and the Equipment Lessors Are Adequately Protected.**

9 To the extent that an entity has a valid security interest in the revenues generated
10 by property, those revenues constitute “cash collateral” under Section 363(a) of the
11 Bankruptcy Code. Pursuant to Section 363(c)(2), the Court may authorize the debtor to
12 use a secured creditor’s cash collateral if the secured creditor is adequately protected.⁷
13 Pursuant to the Supreme Court case of *United Savings Association v. Timbers of Inwood*
14 *Forest Associates* and subsequent case law, the property interest that a debtor must
15 adequately protect pursuant to Section 363(c)(1) and (2) of the Bankruptcy Code is only
16 the value of the lien that secures the creditor’s claim.⁸

17 As set forth above, with respect to One South, that entity generates no cash other
18 than income provided by Wild Game pursuant to its operating agreement with One South.
19 Wild Game’s Budget projects that no such payments will be provided to One South during
20 the Budget Period, and One South will make no payments or otherwise use cash assets
21 pursuant to the Budget. As such, to the extent that the Lender may have a valid,

22
23 ⁶ 11 U.S.C. § 363(c)(2)(B); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981); *In re Tucson*
24 *Industrial Partners*, 129 B.R. 614 (9th Cir. BAP 1991). In addition, where the Debtor is operating a business, it
25 is extremely important that the access to cash collateral be allowed in order to facilitate the goal of
reorganization: “the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash collateral is
necessary to operate a business.” *In re Dynaco Corporation*, 162 B.R. 389 (Bankr. D.N.H. 1993), quoting *In re*
Stein, 19 B.R. 458, 459 (Bankr. E.D. PA 1982).

26 ⁷ *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); see also *In re O’Connor*, 808 F.2d 1393, 1398 (10th Cir.
27 1987); *In re McCombs Properties VI, Ltd.*, 88 B.R. 261, 265 (Bankr. C.D. Cal. 1988).

28 ⁸ *United Savings Association v. Timbers of Inwood Forest Associates*, 108 S.Ct. 626 (1988); see also *McCombs*,
at 266. Section 506(a) “limit[s] the secured status of a creditor (i.e., the secured creditor’s claim) to the lesser of
the [allowed amount of the] claim or the value of the collateral.”

1 perfected, unavoidable security interest in cash held by One South, this Emergency
2 Motion and the Budget do not contemplate that any such cash will be utilized by the
3 Debtors.

4 With respect to Wild Game, the Lender appears to have no security interest
5 whatsoever in that debtors' assets. The Debtors believe that the Equipment Lessors may
6 have security interests in certain of the Debtors' equipment and lighting fixtures, but with
7 certain limited exceptions, such interests do not appear to extend to the Debtors' cash.

8 The preservation of the value of a secured creditor's lien can be sufficient to
9 provide adequate protection to a secured creditor when a debtor seeks to use cash
10 collateral. In *Stein*, the Court found that, as a general rule, a debtor may use cash
11 collateral where such use would enhance or preserve the value of the collateral, and
12 allowed the debtor therein to use cash collateral even though the secured party had no
13 equity cushion for protection. The *Stein* Court determined that the use of cash collateral
14 was necessary to the continued operations of the debtor, and that the creditor's secured
15 position could only be enhanced by the continued operation of the debtor's business.
16 Similarly, in *In re McCombs*, the court determined that the debtor's use of cash collateral
17 for needed repairs, renovations, and operating expenses eliminated the risk of diminution
18 in the creditor's interest in the cash collateral and such use would more likely increase
19 cash collateral.

20 The Debtors has already reduced and will continue with its efforts to reduce further
21 its operating expenses as much as possible. Furthermore, the Debtors are also seeking to
22 obtain post-petition financing which will provide additional liquidity for the Debtors'
23 operation. In the case of *In re Pursuit Athletic Footwear, Inc.*,⁹ the court, accepting the
24 debtor's argument that no additional adequate protection payments need be made, held as
25 follows:

26 if there is no actual diminution in the value of [the] collateral
27 through the date of the hearing, and [Debtor] can operate
28 profitably post-petition, [creditor] is adequately protected for

⁹ *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713 (Bankr. D. Del. 1996).

1 the use of its cash collateral. 11 U.S.C. Section 361; In re
2 Newark Airport/Hotel Ltd. Partnership, 156 B.R. 444, 450
3 (Bankr. D.N.J. 1993); In re Dynaco, 162 B.R. 389, 394-5
(Bankr. D.N.H. 1993); In re Immenhausen Corp., 164 B.R.
347, 352 (Bankr. M.D. Fla. 1994).

4 The only way for the Debtors to maximize their going concern value and avoid a
5 complete shut down of the Debtors' business, which would be absolutely decimating for
6 the Debtors' creditors, customers and employees, is for the Debtors to continue to operate
7 their business seamlessly.

8 **III.**

9 **CONCLUSION**

10 **WHEREFORE**, based upon all of the foregoing, the Debtors respectfully requests
11 that the Court enter an order:

- 12 1. Authorizing the Debtors to use cash collateral to pay all of the expenses set
13 forth in the Budget;
14 2. Scheduling a final hearing n the Debtors' cash collateral motion; and
15 3. Granting such other and further relief as the Court deems just and proper
16 under the circumstances of these cases.

17
18 Dated: July 26, 2010

Respectfully submitted,

19 **ARENT FOX LLP**

20 By: /s/ Aram Ordubegian
21 Aram Ordubegian
22 Andy S. Kong
23 *Proposed* Attorneys for the
Debtors and Debtors in Possession

EXHIBIT "A"

SIENA HOTEL SPA CASINO

Assumptions (1) Limited time to prepare break down of all check for approval (Draft 1)
 (2) Week-Month-Quarter-Year is using non GAAP (4 weeks to a month)
 (3) Estimates on COS are based solely on revenues (as a percentage)

MONTHLY/WEEKLY	YEAR	QUARTER	MONTH	WEEKLY	
NV ENERGY - ELECTRIC	1,020,000.00	255,000.00	85,000.00	21,250.00	Utility
NV ENERGY - GAS	180,000.00	45,000.00	15,000.00	3,750.00	Utility
NV ENERGY - LIGHTS	4,800.00	1,200.00	400.00	100.00	Utility
NV ENERGY - SINCLAIR LIGHTS	1,008.00	252.00	84.00	21.00	Utility
RSCVA - ROOM TAX	600,000.00	150,000.00	50,000.00	12,500.00	Tax
WASTE MANAGEMENT	43,200.00	10,800.00	3,600.00	900.00	Utility
WASTE MANAGEMENT - RIM SYSTEM	3,000.00	750.00	250.00	62.50	Utility
TMWA	28,800.00	7,200.00	2,400.00	600.00	Utility
FOOD	504,000.00	126,000.00	42,000.00	10,500.00	COS
PREMIUM INSURANCE	276,000.00	69,000.00	23,000.00	5,750.00	Insurance
BEST LIFE	60,000.00	15,000.00	5,000.00	1,250.00	Insurance
SPRINT	43,200.00	10,800.00	3,600.00	900.00	Utility
INTEGRA	48,000.00	12,000.00	4,000.00	1,000.00	Utility
FORD CREDIT	17,400.00	4,350.00	1,450.00	362.50	Operations
ALSCO	60,000.00	15,000.00	5,000.00	1,250.00	COS
CENTRAL CREDIT	16,800.00	4,200.00	1,400.00	350.00	Banking
CHARTER COMMUNICATIONS	18,480.00	4,620.00	1,540.00	385.00	Utility
HEALTH INSURANCE	540,000.00	135,000.00	45,000.00	11,250.00	Insurance
NV SELF INSURED - CHSI (WORKMAN'S COMP)	63,600.00	15,900.00	5,300.00	1,325.00	Insurance
RAY MORGAN	41,758.32	10,439.58	3,479.86	869.97	COS
LIQUOR	528,000.00	132,000.00	44,000.00	11,000.00	COS
COLONIAL INSURANCE	14,400.00	3,600.00	1,200.00	300.00	Insurance
FIRE EXTINGUISHER SERVICES	24,000.00	6,000.00	2,000.00	500.00	Utility
HIGH DESERT RECYCLING	4,800.00	1,200.00	400.00	100.00	Utility
JOHNSTONE SUPPLY	18,000.00	4,500.00	1,500.00	375.00	COS
MUZAK	1,832.76	458.19	152.73	38.18	Marketing
STATEWIDE PEST CONTROL	5,280.00	1,320.00	440.00	110.00	Utility
RAYMOND LEASING	1,292.52	323.13	107.71	26.93	Operations
RENO TAHOE AIRPORT AUTHORITY	2,880.00	720.00	240.00	60.00	Taxes
SMART & FINAL	12,000.00	3,000.00	1,000.00	250.00	COS
SHIFT 4	9,600.00	2,400.00	800.00	200.00	Operations
SIERRA SPRINGS WATER	3,600.00	900.00	300.00	75.00	Utility
SYNXIS	36,000.00	9,000.00	3,000.00	750.00	COS
YESCO	84,393.48	21,098.37	7,032.79	1,758.20	COS
BUS & TRAVEL COMMISSIONS	72,000.00	18,000.00	6,000.00	1,500.00	Marketing
BALLY	44,400.00	11,100.00	3,700.00	925.00	Gaming
BALLY - PARTICIPATION	74,400.00	18,600.00	6,200.00	1,550.00	Gaming
ATRONIC - PARTICIPATION	36,000.00	9,000.00	3,000.00	750.00	Gaming
ARUZE - PARTICIPATION	36,000.00	9,000.00	3,000.00	750.00	Gaming
KONAMI	468,462.60	117,115.65	39,038.55	9,759.64	Gaming
KONAMI - PARTICIPATION	54,000.00	13,500.00	4,500.00	1,125.00	Gaming
CIT TECHNOLOGY	9,600.00	2,400.00	800.00	200.00	Gaming
GLORY	4,800.00	1,200.00	400.00	100.00	Gaming
TOTAL	5115787.68	1278946.92	426315.64	106578.91	

MONTHLY/WEEKLY APPROXIMATIONS	YEAR	QUARTER	MONTH	WEEKLY	
ENTERTAINMENT	120,000.00	30,000.00	10,000.00	2,500.00	Artists
SPA SUPPLIES	72,000.00	18,000.00	6,000.00	1,500.00	COS
ADVERTISING	108,000.00	27,000.00	9,000.00	2,250.00	Marketing
MARKETING	120,000.00	30,000.00	10,000.00	2,500.00	Marketing
GIFT SHOP	84,000.00	21,000.00	7,000.00	1,750.00	COS
LINENS	72,000.00	18,000.00	6,000.00	1,500.00	COS

SIENA HOTEL SPA CASINO

CHINA REPLACEMENT	180,000.00	45,000.00	15,000.00	3,750.00	COS
TOTAL	756000.00	189000.00	63000.00	15750.00	

BI-WEEKLY	YEAR	QUARTER	MONTH	WEEKLY	
PAYROLL	4,344,000.00	1,086,000.00	362,000.00	90,500.00	Payroll
PAYROLL TAXES	1,320,000.00	330,000.00	110,000.00	27,500.00	Payroll
COURTNEY BARNETT	42,000.00	10,500.00	3,500.00	875.00	Payroll
CERIDIAN	28,800.00	7,200.00	2,400.00	600.00	Payroll
TOTAL	5734800.00	1433700.00	477900.00	119475.00	

QUARTERLY	YEAR	QUARTER	MONTH	WEEKLY	
MICROS	39,178.04	9,794.51	3,264.84	816.21	Operations
CITY OF RENO - SEWER	80,000.00	20,000.00	6,666.67	1,666.67	Utility
CITY OF RENO - SEWER	800.00	200.00	66.67	16.67	Utility
CITY OF RENO - SEWER	800.00	200.00	66.67	16.67	Utility
CITY OF RENO - SEWER	800.00	200.00	66.67	16.67	Utility
CITY OF RENO - SEWER	800.00	200.00	66.67	16.67	Utility
OTIS ELEVATOR	42,000.00	10,500.00	3,500.00	875.00	Operations
WASHOE COUNTY HEALTH DEPARTMENT	6,000.00	1,500.00	500.00	125.00	Taxes
TOTAL	170378.04	42594.51	14198.17	3549.54	

SEMI-ANNUAL	YEAR	QUARTER	MONTH	WEEKLY	
EASY ROOTER	60,000.00	15,000.00	5,000.00	1,250.00	Operations
TOTAL	60000.00	15000.00	5000.00	1250.00	

YEARLY	YEAR	QUARTER	MONTH	WEEKLY	
SIBERT INSURANCE	540,000.00	135,000.00	45,000.00	11,250.00	Insurance
TOTAL	540000.00	135000.00	45000.00	11250.00	

TAXES	YEAR	QUARTER	MONTH	WEEKLY	
LIVE ENTERTAINMENT TAX	18,000.00	4,500.00	1,500.00	375.00	Taxes
CITY OF RENO QUARTERLY GAMING	72,000.00	18,000.00	6,000.00	1,500.00	Taxes
CITY OF RENO QUARTERLY BAR					
GAMING - NGC 15	16,000.00	4,000.00	1,333.33	333.33	Taxes
GAMING - NGC 01	540,000.00	135,000.00	45,000.00	11,250.00	Taxes
TOTAL	646000.00	161500.00	53833.33	13458.33	

Professional Services	YEAR	QUARTER	MONTH	WEEKLY	
KMC, Inc			8,000.00	2,000.00	
Arent Fox			50,000.00	12,500.00	
OnSite Consulting, Inc			60,000.00	15,000.00	
Kelly Law Group			7,000.00	1,750.00	
Lewis & Roca			10,000.00	2,500.00	
Elever Professional, Inc			10,000.00	2,500.00	
TOTAL	0.00	0.00	145,000.00	36,250.00	

Total	YEAR	QUARTER	MONTH	WEEKLY	
All Planned Expenditures	13,022,965.72	3,255,741.43	1,230,247.14	307,561.79	
Less BK costs	13,022,965.72	3,255,741.43	1,085,247.14	271,311.79	
Less Participation Contracts	-12,778,165.72	-3,194,541.43	-1,064,847.14	-266,211.79	

In re: **Hi-Five Enterprises, LLC**

Debtor(s).

CHAPTER 11

CASE NUMBER 4:10-bk-48268

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Arent Fox LLP, Gas Company Tower, 555 West Fifth Street, 48th Floor, Los Angeles, CA 90013.

A true and correct copy of the foregoing document described EMERGENCY MOTION OF DEBTORS FOR AUTHORITY TO USE CASH COLLATERAL ON AN INTERIM BASIS PENDING A FINAL HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On July 26, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On July 26, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

July 26, 2010

Date

SIMONA FILIP

Type Name

/s/ Simona Filip

Signature

ADDITIONAL SERVICE INFORMATION**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") :**

Office of the U.S. Trustee/Oak
USTPRegion17.OA.ECF@usdoj.gov, ltroxas@hotmail.com

II. SERVED BY U.S. MAIL:**U.S. TRUSTEE**

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20 LARGEST CREDITORS OF HI-FIVE ENTERPRISES, LLC:

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20 LARGEST CREDITORS OF ONE SOUTH LAKE STREET, LLC:

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Las Vegas, NV 89118

In re: **Hi-Five Enterprises, LLC**

Debtor(s).

CHAPTER 11

CASE NUMBER 4:10-bk-48268

RAYMOND LEASING CORPORATION

P.O. Box 130

Greene, NY 13778

PDS GAMING CORPORATION-NEVADA

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WELLS FARGO BANK, NATIONAL ASSOCIATION

3800 Howard Hughes Parkway 4th Floor

Las Vegas, NV 89109

YOUNG ELECTRIC SIGN COMPANY

775 E Glendale Ave

Sparks, NV 89431

BANK WYOMING

435 Arapahoe

Thermopolis, WY 82443-1232